WAWASAN CEMPAKA SDN. BHD.

v.

BANK ISLAM MALAYSIA BHD.

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
N.H. CHAN JCA
MAHADEV SHANKAR JCA
[CIVIL APPEAL NO: W-04-119 OF 1995]
14 MAY 1996

CIVIL PROCEDURE: *Jurisdiction - Sessions Court - Immovable property - Claim for vacant possession - No dispute as to title or ownership - Whether Sessions Court can order delivery of vacant possession - Whether pre-existing landlord/tenant relationship necessary - Whether can exceed RM250,000 ceiling - Whether value of claim relevant - Whether value of property relevant - Subordinate Courts Act 1948, ss. 65(1)(a) & (b), 69, 70 & 71.*

LAND LAW: *Trespass - Claim for vacant possession - Jurisdiction of Sessions Court to order - Whether there must be bona fide question of title involved - Whether landlord/tenant relationship required - Whether values of claim and property relevant - Whether claim for damages may be added to claim for recovery of possession from trespasser.*

The principal issue that arose for decision in the instant appeal was whether the Sessions Court has jurisdiction, pursuant to the Subordinate Courts Act 1948 ('the SCA'), to order delivery of vacant possession in respect of immovable property where there is no dispute as to ownership or title.

The respondent was at all material times the registered owner of two lots of land in Cheras, Kuala Lumpur ('the land'). The appellant was a trespasser which had erected an illegal structure on the land. As it transpired, the Dewan Bandaraya Kuala Lumpur issued a notice to the respondent for the demolition of the said structure. The respondent then gave notice to the appellant to vacate the land. The appellant responded admitting that it was a trespasser and sought permission to remain on the land temporarily. The respondent disagreed and commenced an action in the Sessions Court for the recovery of the land together with damages and costs. The appellant then filed its defence and the respondent moved for summary judgment.

Subsequently, the appellant filed an application to strike out the respondent's action on the ground that the Sessions Court has no jurisdiction to hear the action. It was contended that the Sessions Court can only entertain an action

for the recovery of immovable property if there has been a prior landlord and tenant relationship which has been lawfully determined. Consequently, the appellant submitted that the respondent's action should have been filed in the High Court. In the result, the Sessions Court dismissed the respondent's application for summary judgment and allowed the appellant's application to strike out the respondent's action but refused costs to the appellant.

The respondent appealed to the High Court and the appellant cross appealed against the Sessions Court's refusal to grant it costs. The High Court dismissed the appellant's appeal for costs and allowed the respondent's appeal for vacant possession of the land together with damages. The appellant then appealed to the instant Court. Counsel for the appellant contended that, by virtue of s. 65(1)(a) and (b) of the SCA, the Sessions Court has no jurisdiction to try a civil action if it is not one in respect of landlord and tenant or a chattel or a money claim not exceeding RM250,000. It was further contended that ss. 70 and 71 of the SCA cannot confer jurisdiction upon the Sessions Court if the action is simply for the recovery of immovable property which does not involve a pre-existing landlord and tenant relationship.

Held:

Per Shaik Daud Ismail JCA:

[1] Section 70 of the SCA is a specific and express exception to s. 69 which excludes the jurisdiction of the Sessions Court in actions, suits and proceedings of a civil nature relating to immovable property. Thus, it is clear that the Sessions Court is clothed with the jurisdiction to order delivery of vacant possession of immovable property irrespective of the value of the claim, unless there is, in the opinion of the Court, a *bona fide* question of title involved. Even then, this restriction is subject to s. 71 of the SCA which empowers the Sessions Court to adjudicate in cases where there are disputes or questions of title involved if the parties interested so consent. In the instant appeal there was no question of title involved.

Held:

Per Mahadev Shankar JCA:

[1] The plain meaning of s. 70 of the SCA is that the Sessions Court shall have jurisdiction to hear and determine any action for the recovery of immovable property and, thereupon, to order the proper officer of the Court to put the plaintiff in possession. Section 70(1) of the SCA confers jurisdiction upon the Sessions Court regardless of the value of the immovable property. It matters not if the immovable property is worth more than RM250,000.

[2] Section 70 of the SCA stands independent of s. 65. The effect of s. 70(2) of the SCA is that in any such action there may be added a claim for rent or *mesne* profits or for damages. Although the reference to rent or *mesne* profits in s. 70(2) of the SCA envisages a tenant who is wrongfully holding over, the words "... damages arising to the plaintiff from the defendant holding over or resisting his right of possession ..." clearly refer to damages for trespass which can be added to a claim for the recovery of possession from a trespasser.

[3] Section 70(3) of the SCA was deleted by the Subordinate Courts (Amendment) Act 1994. The removal of the limits under s. 70(3) of the SCA is consistent with the new s. 65(1)(a) and (b). Therefore, if the money claimed arises from and is directly connected to the wrongful occupation of the property, the jurisdiction of the Sessions Court is unlimited.

[4] The only limitations upon the Sessions Court's jurisdiction are now contained in s. 70(4) of the SCA.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Bidangkuasa - Mahkamah Sesyen - Hartanah tak boleh alih - Tuntutan untuk milikan kosong - Tidak terdapat pertikaian berhubung dengan hakmilik atau keempunyaan - Samada Mahkamah Sesyen boleh memerintahkan milikan kosong - Samada perhubungan sedia ada tuanpunya/penyewa adalah perlu - Samada boleh melebihi had yang ditentukan RM250,000 - Samada nilai tuntutan relevan - Samada nilai hartanah relevan - Akta Mahkamah Rendah 1948, ss. 65 (1)(a) & (b), 69, 70 & 71.*

UNDANG-UNDANG TANAH: *Menceroboh - Tuntutan bagi milikan kosong - Bidangkuasa Mahkamah Sesyen kepada perintah - Samada harusnya terdapat persoalan bona fide bagi hakmilik yang terlibat - Samada perhubungan tuanpunya/penyewa diperlukan - Samada nilai-nilai tuntutan dan hartanah adalah relevan - Samada tuntutan bagi gantirugi boleh ditambahkan kepada tuntutan untuk mendapat kembali milikan daripada menceroboh.*

Isu utama yang telah berbangkit untuk keputusan dalam rayuan semasa ini adalah sama ada Mahkamah Sesyen mempunyai bidangkuasa, selaras dengan Akta Mahkamah Rendah 1948 ("SCA"), untuk memerintah penyerahan milikan kosong berhubung dengan hartanah tak boleh alih di mana tidak terdapat pertikaian berhubung dengan keempunyaan atau hakmilik.

Responden adalah pada setiap waktu yang material merupakan tuanpunya berdaftar dua bidang tanah di Cheras, Kuala Lumpur ("tanah tersebut"). Perayu pula adalah penceroboh yang telah mendirikan sebuah struktur haram atas tanah itu. Sepertimana yang berlaku, Dewan Bandaraya Kuala Lumpur telah mengeluarkan notis kepada responden untuk merobohkan struktur tersebut. Responden kemudiannya telah memberikan notis kepada perayu supaya mengosongkan tanah itu. Perayu telah menjawab dengan mengakui bahawa ianya adalah merupakan penceroboh dan berusaha untuk mendapatkan kebenaran untuk kekal berada di atas tanah itu buat sementara waktu. Responden telah tidak bersetuju lalu memulakan satu tindakan dalam Mahkamah Sesyen untuk mendapatkan semula tanah itu berserta dengan gantirugi dan kos. Perayu kemudiannya telah memfailkan pembelaannya dan responden telah membuat usul untuk mendapatkan penghakiman terus.

Kemudiannya, perayu te1ah memfai1kan satu permohonan bagi membatalkan tindakan responden atas alasan bahawa Mahkamah Sesyen tidak mempunyai bidangkuasa untuk mendengar tindakan itu. Adalah ditegaskan bahawa Mahkamah Sesyen hanya boleh melayan sesuatu tindakan untuk mendapatkan semula hartanah tak boleh alih jika sebelum itu terdapatnya perhubungan tuantanah dan penyewa yang mana telah ditentukan secara sah di sisi undang-undang. Akibatnya, perayu telah berhujah bahawa tindakan responden seharusnya telah difailkan dalam Mahkamah Tinggi. Hasilnya, Mahkamah Sesyen telah menolak permohonan responden untuk mendapatkan penghakiman terus dan membenarkan permohonan perayu untuk membatalkan tindakan responden tetapi telah enggan memberi kos kepada perayu.

Responden telah merayu kepada Mahkamah Tinggi dan perayu telah membuat rayuan balas terhadap keengganan Mahkamah Sesyen untuk memberinya kos. Mahkamah Tinggi telah menolak rayuan perayu bagi kos dan membenarkan rayuan responden bagi mendapatkan milikan kosong akan tanah tersebut bersama-sama dengan gantirugi. Perayu kemudiannya telah merayu kepada Mahkamah semasa. Peguam bagi pihak perayu telah menegaskan bahawa, menurut s. 65(l)(a) dan (b) SCA, Mahkamah Sesyen tidak mempunyai bidangkuasa untuk membicarakan satu tindakan sivil jika ianya bukan merupakan suatu tindakan berhubung dengan tuantanah dan penyewa atau tuntutan catel atau wang yang tidak melebihi RM250,000. Ianya seterusnya menegaskan bahawa ss.70 dan 71 SCA tidak boleh meletakkan bidangkuasa ke atas Mahkamah Sesyen jika tindakan itu adalah semata-mata bagi mendapatkan kembali hartanah yang tak boleh alih yang mana tidak melibatkan perhubungan yang tersedia ada antara tuantanah dan penyewa.

Diputuskan:

Oleh Shaik Daud Ismail HMR:

[1] Seksyen 70 SCA adalah suatu pengecualian yang spesifik dan nyata kepada s. 69 yang mana tidak membenarkan bidangkuasa Mahkamah Sesyen dalam tindakan-tindakan, guaman-guaman dan prosiding-prosiding yang bersifat sivil berhubung dengan harta tak alih. Dengan itu ianya jelas bahawa Mahkamah Sesyen mempunyai bidangkuasa untuk memerintahkan penyerahan milikan kosong hartanah tak boleh alih tanpa menghiraukan nilai tuntutan, kecuali menurut pendapat Mahkamah, terdapatnya persoalan bona fide mengenai hakmilik yang terlibat. Sungguhpun demikian, larangan ini adalah tertakluk kepada s. 71 SCA yang mana memberi kuasa kepada Mahkamah Sesyen untuk membuat ketetapan dalam kes-kes di mana terdapatnya pertikaian atau persoalan hakmilik terlibat jika pihak-pihak yang berminat membenarkan sedemikian. Dalam rayuan semasa ini persoalan hakmilik tidak terlibat.

Diputuskan:

Oleh Mahadev Shankar HMR:

[1] Maksud jelas s. 70 SCA adalah bahawa Mahkamah Sesyen akan mempunyai bidangkuasa untuk mendengar dan menentukan manamana tindakan untuk mendapatkan kembali hartanah tak boleh alih dan sesudah itu, memerintahkan pegawai Mahkamah untuk memberikan milikan kepada plaintif. Seksyen 70(1) SCA memberikan bidangkuasa kepada Mahkamah Sesyen tanpa menghiraukan nilai hartanah tak boleh alih itu. Ianya tidak dipedulikan sekiranya hartanah tak boleh alih itu bernilai lebih daripada RM250,000.

[2] Seksyen 70 SCA kekal bebas daripada s. 65. Kesan s. 70(2) SCA adalah bahawa dalam mana-mana tindakan mungkin akan ditambahkan tuntutan untuk sewa atau hasil perantaraan atau pun untuk mendapatkan gantirugi. Walaupun rujukan kepada sewa atau hasil perantaraan dalam s. 70(2) SCA menjangkakan penyewa yang menduduki secara salah, perkataan “damages arising to the plaintiff from the defendant holding over or resisting his right or possession ...” jelas merujuk kepada gantirugi bagi menceroboh yang mana boleh ditambahkan kepada sesuatu tuntutan bagi mendapatkan kembali milikan daripada seorang penceroboh.

[3] Seksyen 70(3) SCA telah dipotong oleh Akta Mahkamah Rendah (Pindaan) 1994. Pengingkiran had-had tersebut di bawah s. 70(3) SCA adalah konsisten dengan s. 65(1)(a) dan (b) yang baru. Dengan itu, jika wang yang dituntut berbangkit daripada dan adalah secara terus dikaitkan kepada penghunian hartanah tersebut secara salah, bidangkuasa Mahkamah Sesyen adalah tidak terhad.

[4] Satu-satunya had ke atas bidangkuasa Mahkamah Sesyen adalah kini terkandung di dalam s. 70(4) SCA.

[Rayuan perayu ditolak]

Cases referred to:
Hiew Kim Swee v. G.C. Gomez [1955] MLJ 170
Mohamed Abu Bakar s/o Yusof v. P.A. Syed Aboothahir s/o P. Ahmed [1990] 1 CLJ 112

Legislation referred to:
Courts Ordinance 1948, s. 70(4)
Subordinate Courts Act 1948, ss. 65(1)(a), (b), 70(2), (3), (4), 71
Subordinate Courts (Amendment) Act 1994
Subordinate Courts Rules 1980, O. 21(1)(d), O. 26A,

[Appeal from High Court Malaya, Kuala Lumpur; Appeal No: R2-12-55 of 1995]

For the appellant - Mohamed Haniff Khatri Abdullah; Haniff & Rajendran
For the respondent - K. Thavakumar; M/s. Mohamed Ismail & Co.

JUDGMENT

Shaik Daud JCA:

The issue to be decided in this appeal is whether pursuant to the Subordinate Courts Act 1948 ('the Act'), the Sessions Court has jurisdiction to order delivery of vacant possession of an immovable property where a dispute as to ownership does not arise.

The background of this appeal is not in dispute. The respondent was a licensed bank while the appellant was a company incorporated under the Companies Act 1965. The respondent had filed a summons in the Sessions Court and in their statement of claim they averred that they were the registered proprietor of two pieces of land known as HS (M) 2660, PT No 1708 and HS 2661, PT No 1709 in the Mukim of Kuala Lumpur and also known as Lots 1 and 2, Batu 5½ Jalan Cheras, Kuala Lumpur (hereinafter referred to as 'the said lands').

The respondent further averred that the appellant had trespassed and illegally occupied the said land without the permission of the respondent. As a result, Dewan Bandaraya Kuala Lumpur ('DBKL') issued a notice to the respondent as the land owners dated 22 June 1994 directing them to demolish buildings erected on the said land without approval, failing which legal action would be taken against the respondent. As a result thereof, the respondent filed the summons in the Sessions Court for an eviction order.

After the appellant entered their defence, both parties each filed an application in the Sessions Court.

The respondent filed an application dated 25 November 1994 for summary judgment against the appellant pursuant to O. 26A of the Subordinate Courts Rules 1980 ('SCR'), praying *inter alia,* for an order:

(a) that the appellant do deliver vacant possession of the said land;

(b) that the appellant do pay damages for occupying the said land;

(c) that the appellant do reimburse whatever payment in fine imposed by DBKL; and

(d) costs.

The appellant on the other hand, filed an application praying *inter alia,* for an order:

(a) that the respondent's summons and statement of claim be struck off pursuant to O. 21(1)(d) of the SCR; and

(b) that the respondent's application for vacant possession of the said land be struck off with costs.

The Sessions Court, after hearing both the above applications at one hearing, dismissed the respondent's application solely on the ground that the Sessions Court has no jurisdiction to give vacant possession of land, and that the matter should have been filed in the High Court. The Court allowed the appellant's application, and struck out the respondent's summons and statement of claim. The Court also ordered each party to pay its own costs.

The respondent appealed to the High Court, while the appellant cross-appealed against the order on costs. The High Court concluded that by virtue of s. 70 of the Act, the Sessions Court had jurisdiction to order delivery of vacant possession of lands where there is no *bona fide* dispute as to ownership. Therefore, the learned High Court Judge allowed the respondent's appeal, set aside both the orders of the Sessions Court as there was in fact no dispute as to ownership, and entered summary judgment against the appellant. Hence, this appeal before us.

As mentioned earlier, the sole issue in the Sessions Court, High Court and this Court is on whether a Sessions Court has jurisdiction pursuant to the Act to order delivery of vacant possession of immovable property. In this connection, the provision most relevant is s. 70 of the Act which provides as follows:

(1) Subject to sub-s. (4), a Sessions Court shall have jurisdiction to hear and determine any action or suit for recovery of immovable property, and thereupon to issue an order to the proper officer of the Court to put the plaintiff in possession of the property.

(2) In any such action or suit, there may be added a claim for rent or *mesne* profit and for damages arising to the plaintiff from the defendant holding over or resisting his right of possession or re-entry, and for damages for breach of any covenants, condition or agreement in relation to the premises.

(3) Deleted.

(4) Except as provided in s. 71, the aforesaid jurisdiction shall not be exercised in any case where, in the opinion of the Court, there is a *bona fide* question of title involved and, subject to that section, recovery of possession of any immovable property under this section shall be no bar to the institution of an action, suit or proceeding of a civil nature in the High Court for trying the title thereto.

It is the contention of learned Counsel for the appellant that by virtue of ss. 65 and 69 of the Act, s. 70 thereof did not give jurisdiction to the Sessions Court to order delivery of vacant possession of immovable property, unless there is relation of landlord and tenant. He contended further that clearly in the context of this case, such a relationship did not exist. He further added that the sessions Court will be so empowered only when the tenant holds over after the termination of a tenancy agreement or after such agreement lapsed.

With respect, I am not in agreement with this line of argument. On my reading of s. 70, it seems clear beyond any doubt that this section clothed the Sessions Court with such a power. It is my view that s. 70 is a specific and express exception to s. 69 which provides:

69. Sessions Court shall have no jurisdiction in actions, suits or proceedings of a civil nature:

(a) relating to immovable property except as provided in ss. 70 and 71;

It seems abundantly clear that s. 69(a), while prohibiting Sessions Court from hearing civil suits relating to immovable property, included an exception in that subsection itself by providing the phrase "except as provided in ss. 70 and 71" and as can be seen, s. 70 expressly and specifically gives such jurisdiction to the Sessions Court. Section 70 was infact amended in 1994 by the Subordinate Courts (Amendment) Act 1994 which deleted the old sub-s. (3). Before the amendment, although s. 70(1) gave such jurisdiction to the Sessions Court, but the then sub-s. (3) restricted this jurisdiction by providing that such jurisdiction shall not be exercised when the money claimed exceeds RM96,000. The 1994 amendments deleted sub-s. (3) and thereby removed this restriction completely.

Thereafter, the only restriction appears to be as provided in the present sub-s. (4) which provides that such jurisdiction shall not be exercised where in the opinion of the Court, there is a *bona fide* question of title involved. From this, it seems clear to me that the Sessions Court is clothed with the jurisdicition to order delivery of vacant possession of immovable property irrespective of the value of the claim, unless there is, in the opinion of the Court, *bona fide* question of title involved. Even this restriction is subject to s. 71 which empowers the Sessions Court to adjudicate, even in cases where there are disputes or question of title in immovable property provided the parties interested consent. From the facts before me, in this case, clearly there is no such dispute or question. On the contrary, learned Counsel for the appellant in his submission conceded that there is no such dispute in title.

Disputes on the jurisdiction of Sessions Court in such matters is not new. As far back as 1955, it was decided that Magistrates' Court (and Sessions Court) had such jurisdiction. In *Hiew Kim Swee v. GC Gomez* [1955] MLJ 170, the issue as to whether a *bona fide* question of title is involved was sought in an application for vacant possession under s. 70(4) of the Courts Ordinance 1948. Section 70(4) of the Courts Ordinance 1948 is similar to the present s. 70(4) of the Act. The learned Magistrate allowed the application when he held that there is no dispute as to title. On appeal to the High Court, Thomson J (as he then was), after reviewing the position in England, held at p. 173:

> I now return to s. 70 of the Local Courts Ordinance. It seems to me clear that the jurisdiction given to Magistrates' Court (and Sessions Courts) by that section is similar to that given to the County Court by s. 122 of the 1846 Act, that is to say, a jurisdiction to decide questions of posSessions where no question of title is involved.

In that case, the learned Judge dismissed the appeal when he agreed that there was no dispute as to title. In the circumstances, there can be no doubt that the Sessions Court has the jurisdiction to order delivery of vacant possession of immovable property where there is no *bona fide* question of title involved.

In the light of these and the clear and unambiguous provisions of s. 70 of the Act, I hold that the Sessions Court has the jurisdiction to order vacant possession of immovable property provided there is no *bona fide* question of title involved. Even then, the Court would have jurisdiction if the parties interested consent. In the present appeal, there is admittedly no such question involved. Therefore this appeal is dismissed with costs.

N.H. Chan JCA:

I have had the advantage of reading the judgments of Shaik Daud and Shankar JJCA and for the reasons given by them I also would dismiss this appeal.

Mahadev Shankar JCA:

Bank Islam Malaysia Bhd. ('the Bank') was at all material times the registered owner of the land comprised in Lot 1 and 2, 5½ Mile Jalan Cheras, Kuala Lumpur ('the said land'). Wawasan Cempaka Sdn. Bhd. (the appellant) entered into and remained in occupation of the said land without any right whatsoever so to do. In other words they are trespassers. Nevertheless, the appellant commenced to erect an illegal structure on the said land which resulted in a notice being issued by the Dewan Bandaraya Kuala Lumpur on 8 June 1994 to the bank as the registered owner of the land that if the structure was not demolished and the land vacated by 22 June 1994, legal action would be taken. The bank thus became aware of the illegal activities of the appellant and gave notice to the appellant to vacate the property. Correspondence followed in which the appellant admitted that they had no right to be on the property but merely asked for permission to remain on the property until November 1994 when they undertook to vacate the said land. The bank did not agree and initiated action in the Sessions Court at Kuala Lumpur to obtain recovery of the said Land, damages and costs.

The appellant did not vacate the said land by November 1994. Instead they blatantly continued to remain in occupation and instructed their solicitors (who had themselves earlier written on behalf of the appellant to remain on the said land only up to November 1994) to resist the action. The appellant's solicitors filed a defence which amounted to nothing more than a bare denial.

Two applications were then filed in the Sessions Court. The bank filed an application for summary judgment. The appellant filed an application to have the action struck out on the ground that the Sessions Court had no jurisdiction to hear the action.

The appellant's solicitors must have been very persuasive. They succeeded in convincing the learned President that notwithstanding that the appellant was a trespasser the true position in law was that the bank's claim was in reality an action for a mandatory injunction. It was further submitted that the Sessions Court could only entertain an action for the recovery of immovable property if there had been a prior relationship of landlord and tenant as between the bank and the appellant which had been lawfully determined. Since the appellant had never been a tenant and was clearly a trespasser, the submission was that the action should have been filed in the High Court.

This submission found favour with the learned President who dismissed the bank's application for summary judgment, allowed the appellant's application to strike out but refused to allow any costs to the appellant since the appellant was clearly a trespasser.

The bank filed an appeal to the High Court. The appellant filed a cross-appeal against the refusal of the learned President to grant them their costs. Both appeals were heard together. The High Court Judge dismissed the appellant's appeal, allowed the bank's appeal and directed the appellant to give vacant possession of the said land and further directed that the bank's damages be assessed in the Sessions Court and be paid by the appellant to the bank.

Before us Counsel for the appellant contended that by the relevant words in s. 65(1)(a) and (b) of the Subordinate Courts Act 1948 ('the Act') a Sessions Court only had unlimited jurisdiction to try all actions of a civil nature in respect of landlord and tenant and all other actions of a civil nature where the amount in dispute or the value of the subject matter did not exceed RM250,000. It was submitted that these words led to the necessary implication that if the action was not in respect of landlord and tenant or for a chattel or a money claim not exceeding RM250,000 the Sessions Court had no jurisdiction. Reference was then made to s. 69 which is to the effect that the Sessions Court has no jurisdiction in actions of a civil nature relating to immovable property except as provided in ss. 70 and 71. It was contended that these sections should be read against the backdrop of the exclusion contained in s. 65(1)(a) and (b) and that the provisions of ss. 70 and 71 of the Act could not confer jurisdiction upon the Sessions Court where the action was simply for the recovery of immovable property which did not involve a pre-existing relationship of landlord and tenant.

We totally reject this submission. The plain meaning of s. 70 of the Act is that a Sessions Court shall have jurisdiction to hear **and** determine **any** action for the recovery of immovable property and thereupon to order the proper officer of the Court to put the plaintiff in possession. Section 70(1) confers jurisdiction regardless of the value of that immovable property. So it matters not if the immovable property is worth more than RM250,000. Section 70 stands independent of s. 65. The effect of s. 70(2) of the Act is that in any such action there may be **added** a claim for rent or *mesne* profits **or** for damages. Although the reference to rent or *mesne* profits in s. 70(2) envisages a tenant who is wrongfully holding over, the words, "damages arising to the plaintiff from the defendant holding over or resisting his right of possession" clearly refer to damages for the trespass which can be added to the claim for recovery of possession from a trespasser.

We need to say something now about s. 70(3) of the Act which has been deleted by the amending Act A 887.

Under the Act as it originally stood s. 70(3) read as follows:

> (3) The aforesaid jurisdiction shall not be exercised when the money claimed exceeds the sum of ninety-six thousand ringgit, or where the rent payable in respect of the premises exceeds the sum of ninety-six thousand ringgit per annum or eight thousand ringgit per mensem.

Since this section has been deleted it is our view that if the money claimed arises from and is directly connected with the wrongful occupation of the property the jurisdiction of the Sessions Court is unlimited.

The Subordinate Courts (Amendment) Act 1994 Act A 887 came into force on 24 June 1994. The removal of the limits under s. 70(3) is consistent with the new s. 65(1)(a) and (b) which now reads as follows:

> (1) Subject to the limitations contained in this Act, a Sessions Court shall have:
>
> (a) unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress; and
>
> (b) jurisdiction to try all other actions and suits of a civil nature where the amount in dispute or the value of the subject-matter does not exceed two hundred and fifty thousand ringgit.

Mohamed Abu Bakar s/o Yusof v. P.A. Syed Aboothahir s/o P. Ahmed [1990] 1 CLJ 112; [1990] 1 MLJ 26 was decided before the amendment had come into force. Section 70(3) of the Act was very much alive when Edgar Joseph Jr. J (as he then was) stated at pp. 30 and 31 of the judgment that *mesne* profits are in the nature of damages for trespass and at p. 31 that the damages payable have to be limited to the jurisdiction of the Court.

The only limitation upon the Sessions Court's jurisdiction now is contained in s. 70(4) of the Act which has no relevance to this appeal since there is no *bona fide* dispute as to title.

In these circumstances the order made by the High Court on 13 September 1995 will stand. We hope there will be no further delay in the recovery of vacant possession of the said land by the bank and in the assessment and payment of the damages due to the bank.

Reported by Gan Peng Chiang